# SUPREME COURT OF THE UNITED STATES

I have been asked to give the readers of the Record some general description of the Supreme Court of the United States, without technical detail, and some account of the personal character and appearance of the judges, says Hampton T. Carson in Philadelphia Record. Such a topic is of undoubted public interest. No visitor to Washington, whether citizen or foreigner, fails to visit the courtroom in the capitol presided over by Chief Justice Fuller, and no one can leave the presence of that bench of judges without a deep conviction of the dignity and power of the tribunal. If he knows something of its history, the impression will be more lasting and his reverence more profound.

The present paper will be confined to an account of the eleven years preceding the elevation of John Marshall to the chief justiceship—all of which were marked by sessions of the court in the city of Philadelphia, which, from 1790 to 1801, was the seat of the federal government.

The national government was organized in New York by the inauguration of Washington at Federal hall, the convention of Congress and the formal opening of the Supreme Court at the same place. No business was transacted except the formal installation of the judges, the selection of a clerk and the admission of a few members of the bar.

When the court next met it was in Philadelphia, in the old city hall, a building still standing at the southwest corner of Fifth and Chestnut streets. The sessions of the court were held in the large room at the head of the stairs upon the second floor, which recently constituted the mayor's audience chamber. It was in this room that John Jay, John Rutledge and Oliver Ellsworth presided as chief justices, and it was in this room that Edmund Randolph, William Bradford and Charles Lee spoke as attorneys general of the United States, and John Marshall, Alexander Hamilton, Samuel Dexter, William Lewis, Edward Tilghman, Jared Ingersoll and William Rawle appeared as advocates.

Chief Justice Jay was a tall, thin man of about 44 years of age. The top of his head was entirely bald, his features were sharp, but cast in a classic mold. His hair, such as he had, was drawn behind his ears, tied with a black ribbon and slightly powdered. His eyes were dark and penetrating and his manners were quiet and unassuming. He had been so constantly in public life that he was more of a statesman than a lawyer; but the purity of his conduct was such that Washington singled him out as one who would give dignity and character to the court over which he was the first to preside.

John Rutledge of South Carolina was the first associate named in the list of five whose names were sent to the Senate in September, 1789. He was a man renowned for his eloquence at the bar and in the First continental Congress. He had been a judge of the court of chancery in his own state, and was said to be of great legal learning. Of this we have no means of judging, for he sat but rarely, and if he delivered opinions they were not reported. He became in name the second chief justice, after Jay had been elected governor of New York, but failed of confirmation, owing to the fact that his brilliant mind suddenly underwent a sad eclipse.

The next associate was William Cushing of Massachusetts, a tall man with a nose like the beak of a hawk; in dress adhering to the style of the revolution, wearing a three-cornered hat, wig and small clothes with shoe buckles; and all these he retained well into the last century. At the time of his appointment he was chief justice of Massachusetts.

Robert Hanson Harrison of Maryland, a special favorite of Washington's owing to his membership of the military staff of the general, declined his appointment, preferring the chancellorship of his state.

James Wilson, the ablest member of the first supreme court, was a leader of the Philadelphia bar, an orator of marvelous power and an international jurist of the highest order. It was his speech in the Pennsylvania convention which induced that body to ratify the constitution of the United States. He was born in Scotland, but at 21 years of age had come first to New York and finally to Philadelphia. He was a signer of the Declaration of Independence and in his early days was a tutor in the old Acadamy of Philedelphia, which was the parent of our noble University of Pennsylvania. He had a broad, open, honest face, with mild blue eyes, and wore a huge pair of heavily rimmed silver spectacles.

John Blair of Virginia was a small man, with an enormous head, particularly broad between the eyes. His hair was red, but scanty and his lower lip was like the bill of a bird. He was a well-trained technical lawyer.

James Iredell of North Carolina, who took Harrison's place, was a collateral descendant of Ireton, the son-in-law of Oliver Cromwell. He was, perhaps, the ablest lawyer of his state, and had attracted attention publicly by the extraordinary strength of his "Reply to the Observations of George Mason" of Virginia, who had been such a sturdy opponent of the constitution of the United States and who had actually refused to sign it.

At first there was no business; the docket was empty, and of records there were none. The judges, however, were all actively engaged in circuit work, and had to deal with exciting state trials growing out of the intrigues of "Citizen Genet," the piratical acts of Henfield an American who tried to make war on England under the protection of the French flag, and the famous whisky insurrection in the western part of Pennsylvania.

When they came together as a court, Rutledge had resigned as an associate, and his place was taken by Thomas Johnson, of Maryland, the man who had nominated Washington as commander-in-chief of the continental army, and who declined to take Jefferson's place as secretary of state in the cabinet of Washington.

By this time a very serious question had arisen. Every state during the revolution, and afterward, had become heavily in debt, not only to its own citizens but to those of other states. How was the money to be collected? Could a sovereign state be sued?

A man named Chisholm, a citizen of South Carolina, sued the state of Georgia; and as a state was a party to the suit it was brought at the outset in the Supreme Court of the United States. The governor and the attorney general of the state refused to appear. It was not for a sovereign commonwealth to be brought to the bar by a private citizen of another state. Here was defiance at the outset of federal authority, and the attorney general of the United States, Edmund Randolph, who had been the governor of Virginia, made a motion that unless Georgia entered an appearance at the next term of court judgment should be entered against her by default. Could such a motion be sustained? The question was not only novel, but it was repiete with difficulty and danger. It was one of constitutional construction, and one of the grounds of opposition to the constitution had been that states would be dragged into court by private parties. Even such a man as John Marshall, who, as we shall see later, became the great expounder of federal doctrine, had exclaimed in debate: "I hope no gentleman will think it possible for a state to be sued!" But Mr. Randolph, though fully conscious of the storm he might arouse, contended for the jurisdiction. His argument was masterly, but it was a one-sided controversy so far as argument was concerned, because the state would not employ counsel to appear for her.

The judges all delivered separate opinions. Justice Blair planted himself on the express language of the constitution. The jurisdiction extends, he said, "to controversies between a state and citizens of another state." Wilson, with a rare gift for final analysis, declared that the question "may, perhaps, be ultimately resolved into one no less radical than this: 'Do the people of the United States form a nation?'" Cushing argued: "If a state is entitled to justice in the federal court against a citizen of another state, why not such citizen against the state, where the same language equally comprehends both?" The opinion of Chief Justice Jay was the most elaborate he ever delivered. It was no degradation of a state to be bound by the terms of the national compact, and the case fell within the spirit and the exact words of the constitution. Iredell alone dissented. The constitution in his view was not self-enforcing. It required an act of Congress to effectuate it. There was no such act, and historically there never had been a suit in assumpsit against a sovereign. His opinion contained all the germs of what subsequently became known as state rights doctrine, and was a quarry where many men have hewn their arguments. Wilson's opinion contained all the germs of what has since been often urged in favor of national power.

So this case is important and interesting both historically and politically.

Georgia, however, would not submit. She passed a law that anyone attempting to enforce the judgment of the Supreme Court against her should suffer the penalty of death. Two days after the decision was pronounced the Eleventh amendment to the constitution was proposed to Congress. The court refused to bend to the popular fury, and entered judgment by default. The plaintiff, however, prudently awaited the action of the states on the amendment, and when that was adopted refused to proceed further.

The importance of the decision, however, remained. It was a clear assertion of national power, and Judge Cooley has since remarked that the Union would have been of but little value if the judges of the highest court had not displayed the courage of their convictions.

Then came the case of Hilton vs the United States, the carriage tax case, which involved the power of Congress to lay taxes; and the distinction between direct and indirect taxes was drawn. It is a case which has been alluded to as a leading one in every argument since, and played an important part in the recent income tax cases. It was argued most brilliantly by Alexander Hamilton. The decision was that uniformity must be observed whenever imposts, excises and duties were laid, and next, wherever the tax was direct, it must be capable of apportionment according to the census. It was clear that a tax on carriages could not be apportioned according to the census, and hence it was held that it could not be a direct tax.

Then followed a very interesting admiralty case, which decided that the United States courts had the exclusive right to determine all unsettled questions as to prize money which had originated in captures on the high seas during the revolution by privateers and vessels fitted out by the separate states. This was important, because several states, particularly Pennsylvania, had taken the ground that the decisions of the old admiralty courts of the state were to control.

A change in the chief justiceship also took place. John Jay had become governor of New York; John Rutledge sor, and Oliver Ellsworth of Connecticut, a very great lawyer, was nominated by Washington and confirmed as chief had not been confirmed as his successjustice in 1796. His most conspicuous service to the country had been his authorship of the judiciary act of 1789, which established the jurisdiction of the various courts of the United States upon lines which have been closely adhered to ever since. He was a man of massive mind, but did not remain long enough in place to assert his really great powers.

Three other men appeared upon the bench before the close of the first ten years of the court's history—Samuel Chase of Maryland, Bushrod Washington of Virginia and Alfred Moore of North Carolina. Chase was a man of great vigor, of intemperate speech and conduct, and was the only justice of the supreme court who was ever impeached. He was triumphantly acquitted. Moore resigned in five years because of ill health, while Washington, who was the favorite nephew of President Washington, was destined to become one of the greatest jurors of the country and the lifelong associate of Marshall.

It is noticeable how difficult it was to organize the supreme court upon a stable basis. The court consisted of six members, appointed for life, and yet in ten years there had been three changes in the head of the court and six changes in the associates. Death, ill health, preference for state service, politics and foreign missions all interfered most materially with its compactness. Frequent changes in the judiciary are always unfortunate. They rob the bench of independence, impair its usefulness and destroy the value of its work by introducing new men, who require time to harmonize themselves with their surroundings.

It may be remarked, as a matter of picturesque incident, that the early court wore parti-colored gowns. The chief justice had broad facings of salmon-colored silk upon the collar, front and sleeves, while the associates wore two narrow stripes of red and white about the shoulders and the sleeves. With the beginning of the last century these were thought to savor too much of Old World fashions, and were supplanted by the heavy black silk gowns which are worn today.